



Office of the Special Representative
of the Secretary-General for

CHILDREN AND ARMED CONFLICT

WORKING PAPER N°1

The Six Grave Violations Against Children During Armed Conflict: **The Legal Foundation**



October 2009

Preface



'... mankind owes to the child the best it has to give...'

Preamble, UN Declaration of the Rights of the Child (1959)

The six grave violations against children during times of conflict, enumerated by the Security Council in its resolutions, form the basis of the Council's architecture in protecting children during war. Monitoring and Reporting mechanisms set up around the world use this framework to gather evidence of grave violations against children in reporting to the Council. This Working Paper attempts to analyse the six grave violations more deeply, exploring their basis in international law. In doing so, we hope to bring clarity to the issues concerned and to strengthen the arguments of child protection partners as they confront these violations in their field of work.

This is the first in a series of Working Papers developed by the Office of the Special Representative for Children and Armed Conflict to assist the community of practice working on the protection of children affected by armed conflict. We hope this effort will assist in bringing conceptual clarity to our work and strengthen our advocacy with member states, sub-national governments, parties to conflict and civil society groups.

Radhika Coomaraswamy
Special Representative of the Secretary-General
For Children and Armed Conflict

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Introduction

*'It is unforgivable that children are assaulted, violated, murdered and yet our conscience is not revolted nor our sense of dignity challenged. This represents a fundamental crisis of our civilization.'*¹

Graça Machel

Protecting children from the ravages of war is a moral imperative, a legal responsibility and a question of international peace and security.² It is also a key humanitarian issue in conflict-affected areas.

The UN Security Council has resolved that the protection of children from armed conflict should be a priority for the international community and is an important aspect of any comprehensive strategy to resolve conflict.³ The United Nation's General Assembly and other UN bodies have repeatedly called for children to be afforded special protection by all parties to armed conflicts.⁴

A child means: 'every human being below the age of 18 years unless under the law applicable to the child, majority is attained earlier.'

Convention on the Rights of the Child

Identifying the Most Heinous Violations of Children's Rights During Armed Conflict

To advance the goal of protecting children during armed conflict and ending the impunity of perpetrators, the UN Security Council – in UNSC Res. 1612 of 2005 – established a Working Group on Children and Armed Conflict and a Monitoring and Reporting Mechanism ("MRM") to systematically monitor, document and report on heinous abuses of the rights of children in situations of armed conflict.⁵ Subsequent Security Council resolution, UNSC Res. 1882 of 2009, has further expanded and strengthened the MRM.⁶

During times of conflict, international humanitarian and human rights law must be respected, with special regard to children who often have no means to defend themselves against abuses.⁷ The *full* range of children's rights – economic, social and cultural as well as political and civil – should be respected, protected and promoted. However, after broad consultations within the UN, its peacekeeping missions, member States and non-governmental organizations, the UN Security Council identified six categories of violations that warrant priority attention.⁸ These **Six Grave Violations against children during armed conflict** were selected due to their ability to be monitored and quantified, their egregious nature and the severity of their consequences on the lives of children.⁹

The Six Grave Violations Against Children During Armed Conflict

1. Killing or maiming of children
2. Recruitment or use of child soldiers
3. Rape and other forms of sexual violence against children
4. Abduction of children
5. Attacks against schools or hospitals
6. Denial of humanitarian access to children

Several maxims that underpin the modern laws of armed conflict are that civilians, adult or child, must be respected; non-combatants protected and unnecessary human suffering avoided.¹⁰ These principles are articulated, most famously, in common Article 3 of the *Geneva Conventions (1949)* which requires, as a minimum standard, humane treatment for persons taking no active part in hostilities – a general protection covering children.¹¹ Children are also afforded specific protections throughout international humanitarian and human rights law – both treaty and customary law.¹² The jurisprudence (i.e. the case law) of international courts and tribunals, regional human rights agreements and the resolutions of the United Nations General Assembly and Security Council are further sources underpinning the illegality of the Six Grave Violations against children in situations of armed conflict.

Customary Rule #135 of International Humanitarian Law:

“Children affected by armed conflict are entitled to special respect and protection.”

International Committee of the Red Cross

An examination of the entirety of legal sources leads to the irrefutable conclusion that the prohibitions encompassed by the Six Grave Violations are norms of international law and basic standards of treatment due to children during armed conflict.

A Legal Foundation to Act Upon

The purpose of this briefing paper is to comprehensively detail the basis for asserting that the actions proscribed by the Six Grave Violations against children in armed conflict are indeed heinous breaches of international law. This paper is designed to assist child-advocates the world over in their mission to protect children and help end impunity. Children must be protected; it is humanity’s legal and moral commitment.

The Six Grave Violations - Key Legal Sources

International Humanitarian law – “The Laws of Armed Conflict”

- The Four Geneva Conventions (1949)
- Additional Protocols to the Geneva Conventions (1977)
- Rome Statute of the International Criminal Court (1998)
- Customary international humanitarian law

International Human rights law

- Convention on the Rights of the Child (1989) and its Optional Protocols (2000)
- UN Declaration of Human Rights (1948)
- International Covenant on Civil and Political Rights (1966)
- International Covenant on Economic, Social and Cultural Rights (1966)
- Regional human rights instruments

International jurisprudence

- Case-law of the International Criminal Tribunal for the former Yugoslavia, International Criminal Tribunal for Rwanda and the Special Court for Sierra Leone
- The Rome Statute and case-law of the International Criminal Court
- Case-law of the International Court of Justice

UN Security Council Resolutions on children and armed conflict

- 1261(1999), 1314(2000), 1379(2001), 1460(2003), 1539(2004), 1612(2005), 1882(2009)

Note: International treaties bind only those States that have signed and ratified them, whilst customary law is universally binding.

Grave Violation 1

Killing and maiming of children



Parties to a conflict must protect children from being killed or seriously injured.

The right not to be arbitrarily deprived of life and the prohibitions against murdering or maiming civilians are principles enshrined in humanitarian law, human rights treaties and international legal judgments.

The prohibition of 'violence to life and person [of non-combatants, including children], in particular murder of all kinds, mutilation, cruel treatment and torture' is a principle of customary international law - with universal applicability in all conflict situations and by all parties.¹³ The *Geneva Conventions'* common Article 3 is the most recognized source of these primary protections. Common Article 3 is universally applicable and allows no derogation. It is binding on both States and non-State armed forces in all conflicts.¹⁴

Persons taking no active part in the hostilities... shall in all circumstances be treated humanely, without any adverse distinction founded on race, colour, religion or faith, sex, birth or wealth, or any other similar criteria.

Common Article 3, Geneva Conventions (1949)

Principles of "Distinction" and "Proportionality"

Two bedrock standards of the laws of armed conflict are the principles of "Distinction" and "Proportionality." They are universally accepted, enshrined in the *Geneva Conventions* and other international treaties and considered fundamental customary norms of international humanitarian law.¹⁵ They apply to State and non-State parties in all armed conflicts.¹⁶ Both principles aim to protect civilians against the effect of hostilities and prevent unnecessary "collateral damage" resulting from combat operations. They prohibit indiscriminate and disproportionate military attacks, as well as direct attacks against civilians.¹⁷ All such attacks may amount to grave breaches of the *Geneva Conventions*.

The principle of distinction between civilian and military targets is one of the "cardinal principles of international humanitarian law" and one of the "intransgressible principles of international customary law."

*Nicaragua Case,
International Court of Justice*

The principle of proportionality prohibits military attacks if they cause civilian death or injury, or damage to civilian objects that is excessive relative to the concrete and direct military advantage anticipated from the attack.¹⁸

The principle of distinction demands that parties to a conflict distinguish between civilians and combatants at all times, and attacks must not be directed against civilians.¹⁹ The use of indiscriminate weapons – for example, landmines and

chemical weapons – are also contrary to the laws of armed conflict and contravene a host of international treaties.²⁰

The UN Security Council and General Assembly have repeatedly passed resolutions affirming their 'strong condemnation of the deliberate targeting of civilians or other protected persons in situations of armed conflict' and decrying the so-called "collateral damage" endured by civilian populations in innumerable armed conflicts, often adopting the measures with unanimity reflecting universal disgust towards these actions.²¹

Protecting Children from Serious Injury

Torture and cruel, inhuman or degrading treatment are also prohibited – in international and non-international armed conflicts and by all parties – by the *Geneva Conventions* and their *Additional Protocols*.²² Mutilation is also expressly prohibited.²³ Indeed, on the contrary, conflict-parties are obliged to provide the wounded and sick the medical care they require whenever practical.²⁴ By virtue of their age, children also enjoy special protection under the *Geneva Conventions*, including an obligation that all parties to a conflict prioritize children's welfare during hostilities.²⁵

An Inherent Right to Life

Human rights treaties declare the paramount importance of the 'right to life, liberty and security of person.' States have a non-derogable responsibility to ensure these rights are protected.²⁶ The killing, torture or ill-treatment of children – even during wartime – is banned under the *Universal Declaration of Human Rights* which was adopted unanimously by the UN General Assembly in 1948, and the *International Covenant on Civil and Political Rights (1966) ("the ICCPR")*.²⁷ The *ICCPR* and the *Convention on the Rights of the Child (1989) ("the CRC")* also absolutely prohibits the capital punishment of children, reflecting the standard in the *Geneva Conventions*.²⁸

The *CRC* recognizes 'that every child has an inherent right to life' and State parties must ensure to the 'maximum extent possible the survival and development of the child.'²⁹ Indeed, the Committee on the Rights of the Child tasked to monitor the practices of States relating to the Convention, has designated this inherent right to life as one of four guiding principles of the entire Convention.³⁰ The *African Charter on the Rights and Welfare of the Child (1990)* and other regional human rights instruments also reflect the basic child's right to life and the right to be free from torture or abuse.³¹ Furthermore, the United Nations' *Convention Against Torture* includes an absolute prohibition on torture and inhuman or degrading treatment, even during wartime.³²

The ever-growing body of international criminal jurisprudence has recognized that willful killing in conflict situations may amount to a war crime, and murder, a crime against humanity.³³ International tribunals for Rwanda, the former Yugoslavia and Sierra Leone have successfully prosecuted commanders for murder, arbitrary killing, torture and other forms of ill-treatment – and held them legally accountable for crimes committed by their soldiers.³⁴ The *Rome Statute of the International Criminal Court (1998)* declares that killing or causing serious bodily harm may amount to a war crime, a crime against humanity or even genocide.³⁵ Furthermore, the *International Criminal Tribunal for the Former Yugoslavia ("the ICTY")* has recognized in *Kunarac, Kovač and Vuković (2001)* that when children are the victims of murder, torture or injury it amounts to 'aggravating circumstances' of such crimes, warranting lengthier than ordinary prison terms for perpetrators.³⁶



Grave Violation 2

Recruitment and use of child soldiers

Parties to a conflict must not recruit or deploy children as soldiers.

Parties to a conflict must prevent children from participating in hostilities.



Recruiting or using children under the age of 15 as soldiers is incontrovertibly prohibited under international humanitarian law – treaty and custom.³⁷ Furthermore, human rights law declares 18 years as the minimum legal age for recruitment and use of children in hostilities.³⁸

Recruiting and Using Children Under 15 Years

Recruitment and use of children under the age of 15 in hostilities is prohibited by the *Convention on the Rights of the Child* and the *Additional Protocols to the Geneva Conventions*.³⁹ The rules that children must not be recruited into armed forces or armed groups and that children must not be allowed to take part in hostilities are considered customary international law, applying equally to international and non-international conflicts, and to State and non-State armed groups.⁴⁰ Judicial affirmation of this came in 2004, when the *Special Court for Sierra Leone* (“SCSL”) ruled in the *Hinga Norman case* that the recruitment and use of children in armed conflict is also a war crime under customary international law.⁴¹ Indeed, the statutes of the UN-endorsed international tribunals for the former Yugoslavia, Rwanda and Sierra Leone all declare that the recruitment and use of children under the age of 15 years in armed conflict is a war crime. The *Rome Statute of the International Criminal Court* (“ICC”) echoes this stance.⁴²

The criminal cases that continue to be considered by the SCSL and the ICC are evidence of the intolerance the international community has for those that recruit and use children in armed conflicts.⁴³ Individual commanders and political leaders are being held criminally accountable for employing children under the age of 15 in hostilities. Examples include:

‘The Parties to the conflict shall take all feasible measures in order that children who have not attained the age of fifteen years do not take a direct part in hostilities and, in particular, they shall refrain from recruiting them into their armed forces.’

Article 77(2),
Additional Protocol I to the Geneva Conventions

- The first indictment ever issued by the International Criminal Court was in 2006 against Thomas Lubanga Dyilo, a Congolese warlord for allegedly conscripting children into his militia during Congo’s civil war.⁴⁴
- Former president of Liberia, Charles Taylor, is the first former Head of State to be indicted for war crimes. The SCSL charged him with, amongst other crimes, recruiting child-soldiers. His trial in The Hague is ongoing at the time of writing.⁴⁵
- An international arrest warrant has been issued for Joseph Kony and other leaders of the Lord’s Resistance Army based in Uganda for war crimes including the forcible recruitment and use of children in hostilities.⁴⁶
- In 2007, the SCSL handed down the first-ever convictions by an international tribunal for the recruitment and use of child-soldiers, sentencing Alex Tamba Brima and two other militia leaders to terms of imprisonment of no less than 45 years each.⁴⁷

Recruiting and Using Children under 18 years

In recent years, human rights treaty law has strengthened the acceptable minimum age for direct participation in hostilities and raised it to 18 years. The *Convention on the Rights of the Child's Optional Protocol on the Involvement of Children in Armed Conflict (2000)* requires State parties to increase to 18 years the minimum age for compulsory recruitment and for direct participation in hostilities. Those countries that continue to permit voluntary recruitment of children under the age of 18 must introduce strict safeguards.⁴⁸ In addition, the *CRC's Optional Protocol* prohibits rebel or other non-State armed groups 'under any circumstances' from recruiting or using children under 18 years in hostilities.⁴⁹

Similarly, whilst not outright banning the recruitment of children under 18, *Additional Protocol I of the Geneva Conventions* and the *Convention on the Rights of the Child* both require that when recruiting 15 to 18 year olds, older children should receive priority.⁵⁰

States Parties to the present Charter shall take all necessary measures to ensure that no child shall take a direct part in hostilities and refrain in particular, from recruiting any child.

Art. 22,
African Charter on the Rights and Welfare of the Child

The International Labor Organization's *Convention No. 182 on the Worst Forms of Child Labor* declares that recruiting child-soldiers below the age of 18 is 'one of the worst forms of child labor.'⁵¹ The ILO's *Recommendation 190* accompanying this convention, as well as UN Security Council resolutions all call for countries to criminalize child-recruitment.⁵² National legislation

and military manuals in numerous countries do indeed reflect this stance.⁵³ The non-binding *Paris Commitments on Children Associated with Armed Forces or Armed Groups (2007)* to protect children from unlawful recruitment suggests States ensure that armed groups within their territory do not recruit children under the age of 18 and that the States themselves respect the international standards for recruitment.⁵⁴ The *African Charter on the Rights and Welfare of the Child (1999)* prohibits 'recruitment and direct participation in hostilities of any person under the age of 18 years.'⁵⁵

Capture and Demobilization of Child Soldiers

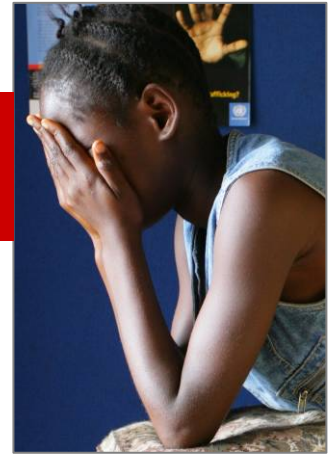
If child-soldiers are captured by opposing armed forces, the special protections afforded to them by international humanitarian law by virtue of their age remain applicable.⁵⁶ (See Grave Violation 4: "Abduction" for information on detention of children.)

Moreover, the *CRC's Optional Protocol on Armed Conflict* insists that parties to a conflict pay particular attention to child-soldiers and all children involved in hostilities during the disarmament, demobilization and reintegration process, including offering programs to provide for the 'psychological recovery and social reintegration' of these children into society.⁵⁷



Grave Violation 3

Rape and other forms of sexual violence against children



Parties to a conflict must not rape or otherwise sexually abuse children.

Rape and other forms of sexual violence against children – boys and girls – are most serious human rights violations, and may amount to grave breaches of international humanitarian law.⁵⁸ Significant acts of sexual violence may constitute a crime against humanity and a war crime.

Rape and other forms of sexual violence during armed conflict are prohibited under the *Geneva Conventions* and their *Additional Protocols*. Child-specific provisions of these treaties specifically forbid sexual violence against children.⁵⁹ The obligation of humane treatment under common Article 3 implicitly prohibits rape or any other sexual violence - be it against women or children.

Article 27 of the 4th *Geneva Convention* explicitly prohibits such actions stating: 'Women [including girls] shall be especially protected against any attack on their honour, in particular against rape, enforced prostitution, or any form of indecent assault.'⁶⁰

'Children shall be the object of special respect and shall be protected against any form of indecent assault.'

Article 77(1),
Additional Protocol I to the Geneva Conventions

The international tribunals for the former Yugoslavia and Rwanda, as well as the European Court of Human Rights and the Inter-American Commission on Human Rights, have recognized that rape amounts to torture – and is therefore absolutely forbidden.⁶¹ Moreover, a host of international agreements prohibits the sexual abuse and exploitation of women and children. These include the *Convention against Torture (1984)*, the *Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others (1949)* and the *Vienna Declaration of the World Conference on Human Rights (1993)*.⁶²

The *ICCPR* and the *Convention for the Elimination of all Forms of Discrimination Against Women (1979)* ("CEDAW") affirm a female's right to liberty and security of person and be free from discrimination.⁶³

State parties must 'protect the child from all forms of sexual exploitation and sexual abuse.'

Article 37,
Convention on the Rights of the Child

The *CRC* and its optional protocol on sex trafficking unequivocally affirm that children must enjoy protection from torture, cruel, inhuman or degrading treatment – a protection broadly accepted as encompassing acts of rape and sexual violence.⁶⁴ Regional human rights agreements such as the *African Charter on the Rights and Welfare of the Child (1990)* also forbid sexual violence against minors.⁶⁵

The prohibition against rape and other grave sexual abuses is a principle of customary international humanitarian law and was included in the *Lieber Code* written during the American Civil War in 1863, the very first codification of the modern laws of armed conflict.⁶⁶

Rape and Sexual Abuse Recognized as Crimes, Even During Wartime

Rape and sexual abuse are proscribed by numerous countries' military codes of conduct and national legislation.⁶⁷ Furthermore, international criminal law explicitly outlaws rape and sexual abuse during wartime and judicial recognition of its customary status in international law came in 1998 with a judgment by the *ICTY*.⁶⁸ The statutes of the *SCSL*, *ICTR* and *ICTY* all cite rape and sexual abuse as war crimes and crimes against humanity.⁶⁹

Rape and other acts of sexual violence against civilians have been prosecuted in the ad-hoc criminal tribunals established to punish the perpetrators of major crimes in several conflicts. In Rwanda – *Akayesu (1998)*, *Musema (2000)*.⁷⁰ And the former Yugoslavia – *Furundžija (1998)*, *Kunarac (2000)* in which the three accused were convicted and jailed for rape, torture and enslavement – the first time in history an international tribunal convicted individuals solely on charges of sexual violence against women and girls.⁷¹ Most recently, the *SCSL* established that “forced marriage” is also an offence under international criminal law when it found three militia leaders guilty of crimes against humanity for forcing girls into marriage.⁷²

“Acts of sexual violence can be prosecuted as constituent elements of a genocidal campaign.”

Akayesu case,
International Criminal Tribunal for Rwanda

The *Rome Statute of the ICC* states that rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization or ‘other forms of sexual violence of comparable gravity’ may constitute war crimes and crimes against humanity.⁷³ Jean Pierre Bemba Gombo, a former self-described Congolese liberation movement leader, is currently standing trial at the *ICC* on war crimes and crimes against humanity charges resulting from alleged instances of rape and other abuses by troops under his command.⁷⁴



Grave Violation 4

Abduction of children



Parties to a conflict must not abduct children.

Abducting, or seizing children against their will and/or the will of their adult guardians either temporarily or permanently without due cause, is illegal under international law. It may constitute a grave breach of the *Geneva Conventions* and amount to a crime against humanity and a war crime.

“State parties shall take all appropriate national, bilateral and multilateral measures to prevent the abduction of, the sale of or traffic in children for any purpose or in any form.”

Article 35,
Convention on the Rights of the Child

The *Geneva Conventions’* common Article 3 requirement of humane treatment for civilians implicitly but undeniably prohibits the abduction of children.⁷⁵ Forced displacement, or deportation of a civilian population, both of which are express prohibitions in the *Geneva Conventions* may also include instances of child-abduction.⁷⁶ Abduction may also amount to ‘enforced disappearance’ and thereby proscribed by several international legal instruments.⁷⁷ Moreover, hostage-taking is forbidden by the *International Convention Against Taking of Hostages*, common Article 3 and other provisions of the *Geneva Conventions*.⁷⁸ The ‘arbitrary deprivation of liberty is prohibited’ under customary international law – with universal application to all parties to conflict, States or non-State armed groups alike.⁷⁹

The abduction of a child violates the rights of the child and his/her family, as recognized by the *Convention on the Rights of the Child*, the *ICCPR* and the *UDHR*.⁸⁰ European, American and African regional human rights instruments also proscribe the abduction of children.⁸¹

The Harsh Consequences of Abduction

In and of itself, abduction during armed conflict may amount to a serious violation of international humanitarian law and of a child’s rights.⁸² However, the magnitude of the violation is compounded by the consequences that often follow a child’s abduction in a conflict zone, including trafficking and enslavement. Significantly, recent conflicts in the former Yugoslavia, the Democratic Republic of Congo and elsewhere bear out that child-abduction often leads to acts constituting other grave violations of a child’s rights, including: recruitment into armed forces (see Grave Violation 2) and rape and sexual violence (see Grave Violation 3).

The illicit transportation of children by government and rebel groups across borders during armed conflict for exploitation constitutes one of the worst forms of child trafficking.⁸³ The *Convention Against Transnational Organised Crime’s Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children (2003)* expressly forbids all forms of human trafficking including for forced recruitment, prostitution and sexual slavery.⁸⁴ In addition, the *Protocol* also recommends States repatriate and rehabilitate children who have been victims of cross-border trafficking.⁸⁵

The abduction of children as part of a pattern of disappearances, for participation in hostilities, for enslavement and for all other forms of child-exploitation is prohibited under international law, including the *CRC's Optional Protocol on sex trafficking* and other international agreements outlawing human trafficking and slavery.⁸⁶

The *ICC's Rome Statute* states that 'unlawful confinement' is a grave breach of the Geneva Conventions and may amount to a war crime.⁸⁷ Perpetrators of either hostage-taking or enforced disappearances are subject to criminal accountability before the International Criminal Court.⁸⁸ Additionally, the *ICC* has jurisdiction to hold to account those that enslave or deport children, or forcibly transfer them from one group to another.⁸⁹ The *ICTY* has established jurisprudence on some of the more egregious types of abductions – enforced disappearances, and abduction leading to enslavement. In *Kupreskic (2000)* and *Kunarac (2001)*, the *ICTY* stated that 'enslavement as a crime against humanity is customary international law' and that enforced disappearance of persons was an inhumane act, which amounted to a crime against humanity as well.⁹⁰

'Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.'

Article 9,
International Covenant on Civil and Political Rights

Detention of Children

Unlawful or arbitrary detention of children is prohibited under international humanitarian and human rights law, and may amount to abduction. Parties to a conflict may detain a child for valid security or military purposes, for instance.⁹¹ But in doing so, such detention must accord with the minimum standards outlined in the *Geneva Conventions*.⁹² Children, and all detainees, must be treated humanely – including an absolute ban on torture, cruel, inhuman or degrading treatment.⁹³ In addition, children by virtue of their age, are afforded special protections.⁹⁴ These protections must be provided to all children, even child-soldiers caught on the battlefield. (See Grave Violation 2.) For example, the *4th Geneva Convention* obligates States to, whenever practicable, detain children separately from adults unless their parents are also detained in which case the family should be kept together.⁹⁵ Children should also be provided additional food in line with their physiological needs.⁹⁶ A child's education should be allowed to continue even in detention and playgrounds for their recreational needs should be provided.⁹⁷



Grave Violation 5

Attacks against schools and hospitals



Parties to a conflict must not attack schools or hospitals, or other education or medical facilities ordinarily used by children.

Schools and hospitals are civilian institutions that often provide shelter and tend to the needs of children during conflict. Attacks against schools or hospitals are, in principle, contraventions of well-established international humanitarian law – treaty and customary law, and may constitute crimes against humanity and war crimes.⁹⁸

Protecting Civilian Objects

The 4th *Geneva Convention* prohibits the targeting of civilian objects, emphasizing the importance of schools and hospitals to the civilian population especially children.⁹⁹ Deliberately targeting schools or hospitals in the absence of military necessity is prohibited under the general legal principle that civilian objects must be distinguished from legitimate military objectives and protected against the consequences of military operations. This is a customary norm of international law applicable in all conflict situations.¹⁰⁰

‘...the Parties to the conflict shall at all times distinguish between the civilian population and combatants and between civilian objects and military objectives and accordingly shall direct their operations only against military objectives.’

Article 48,
Additional Protocol I, Geneva Conventions

The protection afforded to schools and hospitals is comprehensive: According to international customary and treaty law a party to a conflict must guard against targeting or attacking schools and hospitals amidst the opposition group/country's civilian population, as well as safeguard from attack, the schools and hospitals found within its own civilian population or that fall under their control.¹⁰¹ The deliberate targeting or destruction of a school or hospital (or other civilian objects) may amount to a grave breach of the

laws of armed conflict.¹⁰² The sole exception to the blanket protection afforded to schools and hospitals is ‘unless and for such time as they are military targets’ – i.e. being used for military purposes.¹⁰³

Furthermore, humanitarian law makes clear that if in the “fog of war” there is a doubt whether a school or hospital is a military or civilian object, the working presumption that must be made is that a building normally dedicated to civilian purposes is presumed to remain a civilian object.¹⁰⁴

Other international legal agreements citing this prohibition include the *Convention on Certain Conventional Weapons Amended Protocol II* and *Protocol III*, which ban the use of mines and incendiary weapons, respectively, against schools or hospitals or similarly designated civilian objects.¹⁰⁵ The *International Court of Justice* has also declared the protection of civilians and civilian objects of paramount importance under humanitarian law.¹⁰⁶

Hospitals and medical personnel – the providers of primary medical care and assistance to a population – are explicitly afforded special protections under international law dating back to the very beginnings of international humanitarian law with the 1864 *Geneva Convention* and the *Hague Conventions* of 1899 and 1907.¹⁰⁷ It is a maxim of customary international law that medical personnel and facilities, exclusively assigned as such must be respected protected even in a war-zone.¹⁰⁸

The *Convention on the Rights of the Child* recognizes the paramount importance of children's right to education and right to health-care.¹⁰⁹ These rights are also reflected in international and regional agreements including the *Universal Declaration of Human Rights (1948)* and the *International Covenant on Economic, Social and Cultural Rights (1966)* which addresses the right of all persons to 'enjoyment of the highest attainable standard of physical and mental health' and the right of every child to education.¹¹⁰ The targeting and destruction of schools or hospitals may constitute an obstacle to fulfilling such rights.

Scores of countries have enshrined the precept of forbidding the targeting of schools and/or hospitals into national legislation and the military manuals governing the conduct of their armed forces.¹¹¹

The *ICTY* has developed solid jurisprudence on the necessity to protect schools and hospitals from attack, for example in *Kupreskic (2000)* and *Kordic & Cerkez (2001)*.¹¹² The *Rome Statute* extends the criminal accountability for these actions (or failures to protect), providing the *ICC* explicit jurisdiction to prosecute and punish those that intentionally target schools or hospitals during wartime. Such actions amount to war crimes regardless of whether they occur during an international or non-international armed conflict.¹¹³

"The cardinal principles... constituting the fabric of humanitarian law are the following. The first is aimed at the protection of the civilian population and civilian objects..."

International Court of Justice (1996)



Grave Violation 6

Denial of humanitarian access to children



Parties to a conflict must not deny humanitarian access for children even in a conflict zone.

Denial of humanitarian access to children and attacks against humanitarian workers assisting children are prohibited under the *4th Geneva Convention* and its *Additional Protocols*.¹¹⁴ Such a denial of access or attack may constitute a crime against humanity and a war crime.¹¹⁵

Moreover, it is a principle of customary international law that parties to a conflict must *allow and facilitate aid* to any civilian population in need, subject to their right of control.¹¹⁶ Provision of such relief must be impartial in character and conducted without any adverse distinction, for example based on race, age or ethnicity.¹¹⁷ This principle is reflected in the *4th Geneva Convention* and its *Additional Protocol I*.¹¹⁸

Consent to provide relief to a civilian population including to children, must not be refused by a conflict-party on arbitrary grounds, and each party must refrain from deliberately impeding the delivery of relief supplies to civilians in need in areas under its control.¹¹⁹ Instances of such impediment have been repeatedly condemned by the UN Security Council, General Assembly and Human Rights Council.¹²⁰

Denying humanitarian access to children may violate several basic human rights. The freedom of movement of all persons, including aid-workers, is enshrined in several international and regional human rights instruments.¹²¹ Moreover, the denial of humanitarian access to children in need may violate the right to survival, including the right to be free from hunger – a fundamental right enjoyed by all people.¹²²

'The child shall in all circumstances be among the first to receive protection and relief.'

Principle 8,
UN Declaration on the Rights of the Child

In relief operations, children are entitled to special attention and must be provided the care and aid they require.¹²³ The *Convention on the Rights of the Child* has several provisions that necessitate the facilitation of humanitarian relief to children in need, including ensuring that children seeking refugee status 'receive appropriate protection and humanitarian assistance.'¹²⁴

Ensuring Access to Internally Displaced and Refugee Children

The *Guiding Principles on Internal Displacement* are a non-binding set of international standards that were unanimously adopted by the UN General Assembly in 2005. They include the tenet that 'the primary duty and responsibility for providing humanitarian assistance to internally displaced persons lies with national authorities... All authorities concerned shall grant and facilitate the free passage of humanitarian assistance and grant persons engaged in the provision of such assistance rapid and unimpeded access to the internally displaced.'¹²⁵

International humanitarian law - treaty and custom - demand humanitarian personnel have adequate access to refugee and displaced populations, including children.¹²⁶ Additionally, regional human rights instruments and numerous UN Security Council Resolutions demand parties to conflicts provide access for relief personnel to refugee and displaced populations (often with special reference to the plight of children), and ensure their basic human needs are adequately met.¹²⁷

Protection of Humanitarian Relief Personnel

The protection of humanitarian relief personnel and their equipment is one of the oldest maxims of the laws of armed conflict.¹²⁸ Humanitarian relief personnel, their equipment and the buildings or other objects they utilize are afforded specific protection under the *Geneva Conventions* and their *Additional Protocols*.¹²⁹ Parties to a conflict must ensure freedom of movement for authorized humanitarian relief personnel, subject only to imperative military necessity.¹³⁰ Medical transports and facilities are specifically provided further protections as well.¹³¹ These protections are recognized as customary international law.¹³²

“Parties must also permit the free passage of all consignments of essential foodstuffs, clothing and tonics intended for children under 15, expectant mothers and maternity cases. And when distributing humanitarian relief priority must be given to such persons as children, expectant mothers and maternity cases.”

Article 23, 4th Geneva Convention

The United Nations is the largest supplier and operator of humanitarian relief operations. The 1994 *Convention on the Safety of United Nations and Associated Personnel* was enacted to reinforce the sanctity of their relief personnel.¹³³ UN Security Council Resolutions have repeatedly voiced concern at the targeting of humanitarian aid workers and UN mission-staff. The Security Council has repeatedly condemned attacks against UN humanitarian relief workers as ‘clear violations of international humanitarian law’ - and similarly, adopted resolutions after specific instances of aid-workers being targeted and/or hurt in armed conflicts, including in Afghanistan, Haiti and the former Yugoslavia.¹³⁴

The denial of humanitarian access attracts criminal accountability, even in times of war. For example, the *SCSL* declared it a war crime and in 2009 handed down the first ever convictions from an international tribunal to three militia leaders for targeting humanitarian workers and peacekeepers with direct attacks.¹³⁵ The *ICTY* established that depriving inmates of food and other vital services in detention centers constitutes the basis for the charges of war crimes and crimes against humanity.¹³⁶ The *Rome Statute* underscores that intentional attacks against a peacekeeping or humanitarian assistance mission acting in accordance with the UN Charter constitute a war crime.¹³⁷ Furthermore, under the Statute’s definitions, using starvation as a method of warfare or willfully impeding relief supplies may amount to a war crime or even genocide.¹³⁸



Conclusion

'State parties shall take all feasible measures to ensure protection and care of children who are affected by an armed conflict.'

Article 38, Convention on the Rights of the Child

In summary, each of the Six Grave Violations against children during armed conflict may constitute:

- A grave breach of the *Geneva Conventions* and their *Additional Protocols*
- A violation of customary norms of international law
- A violation of obligations contained in the *Convention on the Rights of the Child* and other international and regional human rights treaties
- A war crime or crime against humanity under the *Rome Statute*.

As recent jurisprudence and the commencement of the *International Criminal Court's* operations demonstrate, **perpetrators of these Six Grave Violations, and their commanders and political leaders, have been and will continue to be held accountable for their crimes:**

- Under national laws and military codes of justice
- Under international criminal law, and by the *International Criminal Court*.

Ending occurrences of the Six Grave Violations against children is a priority goal for the Office of the Special Representative of the Secretary-General for Children and Armed Conflict and the entire United Nations system. The UN is committed to ensuring compliance with relevant international law and Security Council resolutions that demand the protection of children from the scourge of armed conflict.

Concerned international organizations, national governments and NGOs must all work to strengthen the mechanisms of monitoring, reporting and bringing to justice perpetrators of these criminal and immoral acts. Children are one of the most vulnerable and precious sectors of any society. Impunity for crimes against children must end; our children deserve protection – especially during armed conflict.



ANNEX I – Glossary of Major Sources

Fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War - “4th Geneva Convention”

The Geneva Conventions consist of four treaties formulated in Geneva, Switzerland in 1949 that set the international obligations intended to resolve matters of humanitarian concern arising directly from armed conflicts whether of an international or non-international nature. These four treaties are the basis for international humanitarian law and have been acceded to by 194 countries. The Fourth Convention deals directly with the protection of civilians during wartime.

Additional Protocols to the 1949 Geneva Conventions - “API” & “APII”

Both protocols were adopted in 1977.

- Protocol I: relating to the protection of victims of international armed conflicts. It has been ratified by 168 countries.
- Protocol II: relating to the protection of victims of non-international armed conflicts. It has been ratified by 164 countries.

Convention on the Rights of the Child – “CRC”

The United Nations Convention on the Rights of the Child is an international convention setting out the civil, political, economic, social and cultural rights of children. Compliance is monitored by the United Nations Committee on the Rights of the Child.

The United Nations General Assembly adopted the Convention and opened it for signature on 20 November 1989. 193 countries have ratified it – more than any other human rights treaty – including every member of the United Nations except the United States and Somalia. Notably, a derogation clause, which is included in other human rights treaties that allow States to put some human rights obligations on hold during “emergencies”, is not in the CRC.

Optional Protocol on Children and Armed Conflict to the Convention on the Rights of the Child

The United Nations General Assembly adopted the Optional Protocol on the involvement of children in armed conflict to the Convention on the Rights of the Child in May 2000. The protocol came into force in February 2002 – more rapidly than any other human rights treaty. Currently, 127 nations are party to the Protocol while another 28 have signed and are yet to ratify.

Universal Declaration of Human Rights – “UDHR”

The Universal Declaration of Human Rights is a declaration adopted by the United Nations General Assembly in December 1948. Guinness Book of Records describes the *UDHR* as the “Most Translated Document” in the world. The Declaration arose directly from the experiences of the Second World War and the Holocaust, and represents the first global expression of rights to which all human beings are inherently entitled.

The International Covenant on Economic, Social and Cultural Rights – “ICESCR”

The International Covenant on Economic, Social and Cultural Rights is a multilateral treaty adopted by the United Nations General Assembly on December 16, 1966, and in force from 3 January 1976. It commits its parties to work toward the granting of economic, social, and cultural rights to individuals, including labour rights and rights to health, education, and an adequate standard of living. The Covenant has 160 parties.

Rome Statute of the International Criminal Court - "Rome Statute" and "ICC"

The Rome Statute is the treaty that established the International Criminal Court. It was adopted at a diplomatic conference in Rome on 17 July 1998 and it entered into force on 1 July 2002. Among other things, the statute establishes the court's functions, jurisdiction and structure. 108 states are party to the statute.

The International Criminal Tribunal for the former Yugoslavia – "ICTY"

The International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991 is a body of the United Nations established to prosecute serious crimes committed during the wars in the former Yugoslavia, and to try their alleged perpetrators. The tribunal is an ad-hoc court that is located in The Hague, the Netherlands.

The International Criminal Tribunal for Rwanda – "ICTR"

The International Criminal Tribunal for Rwanda is an international court established in November 1994 by the United Nations Security Council in order to judge those people responsible for the Rwandan genocide and other serious violations of the international law performed in the territory of Rwanda, or by Rwandan citizens in nearby states, between 1 January and 31 December 1994. Since 1995, it has been located in Arusha, Tanzania.

The Special Court for Sierra Leone – "SCSL"

The Special Court for Sierra Leone is an independent judicial body set up to "try those who bear greatest responsibility" for the war crimes and crimes against humanity committed in Sierra Leone after 30 November 1996 during the Sierra Leone Civil War. The court is located in Freetown.

Customary International Humanitarian Law

Customary international law is formed by a general practice accepted as law. Together with treaty law and general principles of law, custom is one of the primary sources of international law (see Article 38, Statute of the International Court of Justice). For example, the laws of war were long a matter of customary law before they were codified in the Geneva Conventions and other treaties.

Customary international law consists of rules of law derived from widespread and uniform conduct of States acting out of the belief that the law requires them to act in a given way (in case of an obligatory rule) or prohibits certain acts (in case of a prohibitive rule). It follows that customary international law can be discerned by a widespread repetition by States of similar international acts (or their omission) over time (State practice). These acts or omissions must occur out of sense of obligation (*opinio juris*). Practice has to be followed by a significant number of States and not be rejected by a significant number of States.

To clarify the content of customary international humanitarian law, the International Committee of the Red Cross (ICRC) conducted a landmark multi-year study of the rules that constitute customary international humanitarian law. This study was commissioned by States at the 26th International Conference of the Red Cross and Red Crescent in December 1995. It was published after nearly 10 years of extensive research into practice and widespread consultations. It aims to provide a reference tool to practitioners to easily find the rules of customary international humanitarian law and the practice upon which it is based. It has been used/referred to by national and international courts and tribunals and by UN rapporteurs, among others.

A peremptory norm (also called *jus cogens*, Latin for 'compelling law') is a fundamental principle of international law, which is accepted by the international community of States as a norm from which no derogation is ever permitted.

UN Security Council – “UNSC”

The United Nations Security Council is one of the principal organs of the United Nations and is charged with the maintenance of international peace and security. Its powers, outlined in the United Nations Charter, include the establishment of peacekeeping operations, the establishment of international sanctions, and the authorization of military action. Its powers are exercised through United Nations Security Council resolutions. Security Council resolutions are legally binding if they are made under Chapter VII of the Charter. Resolutions made under Chapter VI, however, have no enforcement mechanisms and are generally considered to have no binding force under international law. In 1971, however, a majority of the then International Court of Justice (ICJ) members asserted in the non-binding Namibia advisory opinion that all UN Security Council resolutions are legally binding.

UN General Assembly – “UNGA”

The United Nations General Assembly is one of the five principal organs of the United Nations and the only one in which all member nations have equal representation. Its powers are to oversee the budget of the United Nations, appoint the non-permanent members to the Security Council, receive reports from other parts of the United Nations and make recommendations in the form of General Assembly resolutions. These are generally statements symbolizing the sense of the international community about an array of world issues. Most General Assembly resolutions are not enforceable as a legal or practical matter, because the General Assembly lacks enforcement powers with respect to most issues. However, various groups feel that the old classic concept according to which General Assembly resolutions have no legal effect must be discarded. Many resolutions may also be constitutive or proof of international customary law, and therefore binding on member states.

ANNEX II – Further Information

The following organizations have resources for further exploration of the topic:

- Special Representative of the Secretary-General on Children and Armed Conflict – www.un.org/children/conflict
- United Nations Children's Fund (UNICEF) – www.unicef.org
- International Committee of the Red Cross – www.icrc.org
- Watchlist on Children and Armed Conflict – www.watchlist.org
- Child Rights Information Network – www.crin.org
- Human Rights Watch – www.hrw.org

ENDNOTES

¹ Graca Machel, *The Impact of Armed Conflict on Children* attached to: UN Note of the Secretary-General, A/51/306 (1996), para. 317.

² Additionally, the UN Security Council has characterized crimes against children during wartime as a ‘potential threat to international peace and security’ the Council leaves open the possibility of imposing more stringent sanctions, or even intervening under Chapter 7 of the UN Charter in response to such crimes. See UNSC Resolutions cited below.

³ See, for example, United Nations Security Council Resolutions 1261 (1999), 1314 (2000), 1379 (2001), 1460 (2003), 1539 (2004), 1612 (2005), 1882 (2009)

⁴ See, for example, UN General Assembly Declaration, *A World Fit For Children*, appended to A/Res/S-27/2 (2002) which was unanimously adopted. Also: A/Res/62/141 (2008), A/Res/63/241 (2009).

⁵ UNSC Resolution 1539 (2004) lists grave violations committed against children during armed conflict and calls for the establishment of the MRM and Action Plan. UNSC Resolution 1612 (2005) formally authorizes both steps and establishes a Security Council Working Group to oversee these initiatives.

⁶ Significantly, UNSC Res. 1882 broadens the criteria by which parties can be listed by the UN Security Council and investigated under the Monitoring and Reporting Mechanism. It specifically ‘requests the Secretary General also to include in the annexes to his reports on children and armed conflict those parties to armed conflict that engage, in contravention of applicable international law, in patterns of killing and maiming of children and/or rape and other sexual violence against children, in situations of armed conflict.’ Para. 3, UNSC 1882 (2009).

⁷ Human rights treaty law applies at all times, but certain treaty-provisions allow for suspension in times of emergency. See, for example, art. 4 *International Covenant on Civil and Political Rights* (1966).

⁸ Under the UNSC 1612 framework, parties that commit these grave violations during armed conflict may then be subjected to the UNSC’s MRM and have their actions investigated and reported on back to the UNSC for possible further action.

⁹ See above n. 5.

¹⁰ For example, art. 3, 27-34 Geneva IV; art. 75 AP I; art. 4, 13 AP II. See also the official International Committee of the Red Cross Commentary on the 4th Geneva Convention (1949): Oscar Uhler and Henri Coursier, *Geneva Convention relative to the Protection of Civilian Persons in Time of War : Commentary*, ICRC, Geneva (1958).

¹¹ For example: ‘All children have the right to special protection, care and aid.’ art. 7, *American Declaration of the Rights and Duties of Man*, Organization of American States (1948).

¹² Special protections for children are detailed later in this paper, and include:
Humanitarian law: art. 77 AP I; art. 4 AP II (1977).

Human rights law: art. 19, *American Convention on Human Rights*, Organization of American States (1969) - ‘Every minor child has the right to the measures of protection required by his condition as a minor on the part of his family, society, and the state.’

¹³ Common article 3 *Geneva Conventions* (1949). See also: art. 12, 50 Geneva I; art. 12, 51 Geneva II; art. 13, 17, 87, 89, 130 Geneva III; art. 5, 27, 32, 147 Geneva IV; art. 75, 77 AP I; art. 4, 13 AP II; Customary Rules 87, 89-92, 135 of the International Committee of the Red Cross (Henckaerts, Doswald-Beck eds.), *Customary International Humanitarian Law Vol. I: Rules*, Cambridge University Press (2005).

Art. 147 Geneva IV lists “grave breaches” of the Conventions.

¹⁴ In the *Nicaragua Case*, International Court of Justice (1986), the ICJ stated that common Article 3 of the Geneva Conventions (1949) reflected ‘elementary considerations of humanity’ constituting a ‘minimum yardstick applicable to all armed conflicts.’ In *The Prosecutor vs. Tadic*, International Criminal Tribunal for the Former Yugoslavia (1999), the Tribunal found that civilians in non-international armed conflicts are protected by the same common article 3 protections of the Geneva Conventions.

¹⁵ Customary Rules 1 – 24 in: ICRC, *Customary International Humanitarian Law Vol. I: Rules*, Cambridge University Press (2005), p. 3.

¹⁶ See, for example, on the universality of the principles: *Nuclear Weapons Case*, International Court of Justice (1996); *Prosecutor v. Kupreskic*, ICTY (2000).

¹⁷ Art. 48, 51, 52, 57 AP I; art. 13 AP II; art. 3 *Protocol II*, and art. 3 *Amended Protocol II to the Convention on Certain Conventional Weapons* (1980);

¹⁸ Art. 51, 57 AP II; art. 3 *Protocol II*, and art. 3 *Amended Protocol II to the Convention on Certain Conventional Weapons* (1980); art. 8(2)(b) *Rome Statute of the International Criminal Court* (1998)

¹⁹ Art. 48, 51, 52 AP I; art. 4, 13 AP II; art. 4 – 7 *Amended Protocol II* and art. 2 *Protocol III to the Convention on Certain Conventional Weapons* (1980); art. 8(2)(e) *Rome Statute of the International Criminal Court* (1998).

²⁰ Art. 35 AP I; art. 6 *Protocol II* and art. 3 *Amended Protocol II to the Convention on Certain Conventional Weapons* (1980); *Ottawa Landmine Ban Treaty* (1997). Cluster munitions are another category of weapons which many are seeking to be

outlawed. The *Convention on Cluster Munitions (2008)* has been ratified by 17 States, 13 short of the requisite 30 for the convention to come into force.

²¹ See for example: UNSC 1882 (2009), UNSC 1296 (2000), UNGA 2444 (1988) – unanimously adopted. (Other resolutions include: UNSC 564, UNSC 1001, UNSC 1181)

²² Art. 147 Geneva IV; art. 75(2) AP I; art. 4(2) AP II.

²³ Art. 3 and 32 Geneva IV; art. 11 and 75 AP I; Art. 4 AP II

²⁴ Common article 3 Geneva Conventions; Art. 50 Geneva IV; art. 10 and 11 AP I; art. 5 and 7 AP II

²⁵ Art. 23, 24, 38, 50, 76 and 89 Geneva IV; art. 70 and 77 AP I; art. 4 AP II

²⁶ Art. 3, *Universal Declaration of Human Rights* (1948).

²⁷ Art. 3, 5 UDHR; art. 6, 7 ICCPR

²⁸ Art. 37 *Convention on the Rights of the Child (1989)* (“the CRC”); art. 6 ICCPR; art. 23, 24, 50, 76, 89 Geneva IV; art. 70, 77 AP I; art. 4(3) AP II

²⁹ Art. 6, 37 CRC

³⁰ World Conference on Human Rights, *Vienna Declaration and Programme of Action (1993)*, A/Conf. 157/24).

³¹ Art. 5, 16 *African Charter on the Rights and Welfare of the Child*, Organization of African States (1990).

³² ‘No exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political in stability or any other public emergency, may be invoked as a justification of torture.’ Article 2(2), *Convention Against Torture* (1984).

³³ For murder to be a crime against humanity it must be committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack, see Art. 7(1), Rome Statute.

Willful killing categorized as a war-crime, see Art. 8(2), Rome Statute.

³⁴ *Prosecutor v. Kordic and Cerkez*, ICTY (2001): Accused guilty of “murder” as a crime against humanity, and “wilful killing” as grave breach of the Geneva Conventions and war-crime.

Prosecutor v. Kupreskic, ICTY (2000): Accused found “guilty of a crime against humanity (murder).”

³⁵ Murder is categorized as a crime against humanity if it is committed as part of widespread or systematic attack directed against a civilian population, with knowledge of the attack. Art. 6, 7, 8 Rome Statute.

Also physical mutilation, unjustifiable scientific or medical experimentation or treacherously wounding individuals belonging to the hostile nation are also categorized as war-crimes. See Art. 8, Rome Statute.

³⁶ *Prosecutor v. Kunarac, Kovač and Vuković*, ICTY (2001)

³⁷ See, for example: ICRC, as above n. 13, p.482-488.

³⁸ *Ibid.*

³⁹ Art. 77(2) AP I; art. 4(3) AP II; art. 38 CRC

⁴⁰ Customary Rule 136 and 137 in: ICRC, as above n. 13, p. 482

⁴¹ Art. 4(c) *Statute of the Special Court for Sierra Leone* (2002). *Prosecutor v. Hinga Norman (Decision on Preliminary Motion)*, SCSL (May 2004). In 2007 the SCSL which has paid special attention to the prosecution child-recruiters found three commanders guilty of crimes against humanity and war-crimes for, *inter alia*, recruiting children under the age of 15 and allowing them to participate in hostilities: *Prosecutor v. Hinga Norman, Fofana and Kondewa*, SCSL (2007).

⁴² Art. 8(2)(b) and 8(2)(e) Rome Statute.

⁴³ See, for example, a most recent conviction by the SCSL: *Prosecutor vs. Alec Tamba Brima, Brimay Bazy Kamara and Borbor Kanu* (20 June 2007)

⁴⁴ *Prosecutor v. Thomas Lubanga Dyilo*, ICC (2009). Germain Katanga and Mathieu Ngudjolo Chui, two other militia leaders have been similarly arrested and will stand trial by the ICC on child recruitment charges.

⁴⁵ *Prosecutor v. Charles Taylor*, SCSL (2009).

⁴⁶ *Prosecutor v. Joseph Kony, Vincent Otti, Oko Odhiambo and Dominic Ongwen*, ICC (ongoing).

⁴⁷ The Prosecutor of the Special Court v. Alex Tamba Brima, Brimay Bazy Kamara, Santigie Borbor Kanu (the AFRC accused), SCSL (19 July 2007)

⁴⁸ Art. 1 – 3, *Optional Protocol to the Convention on the Rights of the Child on the Involvement of children in armed conflict* (2000) See also: Principle 9, *Declaration of the Rights of the Child* (1959): ‘The child shall not be admitted to employment before an appropriate minimum age; he shall in no case be caused or permitted to engage in any occupation or employment which would prejudice his health or education, or interfere with his physical, mental or moral development.’

⁴⁹ Art. 4, *Optional Protocol to the CRC on children and armed conflict* (2000)

⁵⁰ Art. 77(2) AP I

⁵¹ Art. 1- 3 *International Labor Organization Convention No. 182 on the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour* (1999). See also: art. 3(1) of *ILO Convention No. 138, ‘Minimum Age Convention’* (1973): ‘The minimum age for admission to any type of employment or work which by its nature or the circumstances in which it is carried out is likely to jeopardise the health, safety or morals of young persons shall not be less than 18 years.’

⁵² International Labor Organization, *Recommendation Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labor* (1999); UNSC Resolution 1882 (2009)

⁵³ According to the ICRC's study of international practices no contrary state practice was found.

See: above n. 13 , p.483 for citations of several countries' legal provisions.

⁵⁴ Para. 4 of *Paris Commitments to protect children from unlawful recruitment or use by armed forces or armed groups* (2007)

⁵⁵ Art. 22, *African Charter on the Rights and Welfare of the Child* (1990).

⁵⁶ Art. 77 AP I; art. 4 AP II.

⁵⁷ Art. 6, 7 Optional Protocol CRC (armed conflict).

⁵⁸ 'Rape and other forms of sexual violence' is not specifically listed in article 147 of 4th Geneva Conventions casting some doubt in some scholars' minds as to its status as a "grave breach" of the Geneva Conventions. Nevertheless most scholars, international and national courts that have decided on the matter conclude that it falls within the reasonable understanding of 'torture or inhuman treatment' or 'serious injury to body or health.'

⁵⁹ Article 27(2) Geneva IV; art. 75(2), 76(1), 77(1) AP I; art. 4(2)(e) AP II – which specifically adds "rape" to the list of forms of indecent assault. See also: Customary Rule 93 in: ICRC, as above n. 13 , p. 323.

Child-specific provisions: Art. 77 AP I; art. 4(3) AP II.

⁶⁰ Specific provisions in the Geneva Conventions relating to protection against rape and sexual abuse include: Common art. 3; art. 12, 50 Geneva I; art. 12, 51 Geneva II; art.13, 17, 87, 89 Geneva III; art.5, 27, 32, 147 Geneva IV; art. 75 AP I; art. 4(1) AP II; and Rules 87, 89-92 of: ICRC, *Customary International Humanitarian Law*, as above n. 13 , p. 306.

⁶¹ See for example: *Prosecutor v. Jean Paul Akayesu*, ICTR (1998) and *Delalic, Celebic and Furudzija* cases, ICTY (1998), European Court of Human Rights, *Aydin vs. Turkey* (1997), Inter-American Commission on Human Rights, *Case 10.970 (Peru)* (1996).

⁶² See for example: Art. 1 *Convention Against Torture* (1984); art. 1, *Convention on Suppression of Trafficking and Exploitation* (1949); Part 5, *Vienna Declaration of the World Conference on Human Rights* (1993).

⁶³ Art. 2, 3, 6 ICCPR; art. 1-3 CEDAW.

⁶⁴ Art. 34, 35, 37 CRC, Art. 3, CRC's *Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography* (2000).

⁶⁵ Art. 27, *African Charter on the Rights and Welfare of the Child* (1990). See also: *Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa* whose preamble calls for the condemnation and elimination of 'any practice that hinders or endangers the normal growth and affects the physical, emotional and psychological development of women and girls.' See also: Art. 3, 5 *European Convention on Human Rights* (1950); art. 5, 7, 11 *American Convention on Human Rights* (1969).

⁶⁶ Customary Rule 93 in: ICRC, as above n. 13 , p. 323 which states that: 'Rape and other forms of sexual violence are prohibited.' Art. 44 *Lieber Code* (1863)

⁶⁷ See, for examples of countries' legal proscriptions: as above n. 13 , p. 324-5.

⁶⁸ *Prosecutor v. Furundzija* , ICTY (1998).

⁶⁹ War crimes: art. 3(e) SCSL; art.4(e) ICTR; art. 2 ICTY. Crimes Against Humanity: art.2(g) SCSL; art.3(g) ICTR; art.5(g) ICTY.

⁷⁰ *Prosecutor v. Akayesu*, ICTR (1998), *Prosecutor v. Musema*, ICTR (2000).

⁷¹ *Prosecutor v. Furundzija* , ICTY (1998): The ICTY Trial Chamber noted that prohibition of rape and serious sexual assault in armed conflict under customary international law has gradually crystallized. The Tribunal found the accused guilty of a violation of the laws and customs of war (outrages upon dignity, including rape).

Prosecutor v. Kunarac, Kovac and Vukovic, ICTY (2000): The ICTY Trial Chamber found the accused guilty of "crimes against humanity (rape)" and "violations of the law of customs of war (rape)."

⁷² *Prosecutor vs. Alec Tamba Brima, Bratty Camara and Borbor Kanu* (SCSL, 20 June 2007)

⁷³ Art. 7(1)(c), 7(1)(g), 8(2)(b), 8(2)(c), 8(2)(e) Rome Statute.

⁷⁴ Confirmation of charges in *Prosecutor v. Jean-Pierre Bemba Gombo*, International Criminal Court, 12 – 15 January 2009.

⁷⁵ Common article 3, *Geneva Conventions* (1949); Customary Rule 99 of ICRC, as above n. 13, p.332

⁷⁶ Art. 49, 147 Geneva IV; art. 85(4) AP I, art. 17 AP II.

⁷⁷ Art. 147, GCIV; Art. 2, 25 *International Convention for the Protection of All Persons from Enforced Disappearance* (2006); art. 1 *UN Declaration on Enforced Disappearance* (1992); art. 1 *Inter-American Convention on the Forced Disappearance of Persons* (1994).

⁷⁸ Art. 34, 147 Geneva IV; art. 75(2) AP I; art. 4(2) AP II; Customary Rule 96 of ICRC, as above n. 13 , p. 334; art. 1 *International Convention Against Taking of Hostages* (1979).

⁷⁹ Customary Rule 99 in: ICRC, as above n. 13, p. 344.

⁸⁰ Child: Art. 8, 35, 37 CRC; art. 9, 23 ICCPR; art. 9 UDHR. Family: Art. 3, 5; Art. 16, UDHR,

- ⁸¹ Art. 3, 5 *European Convention on Human Rights (1950)*; art. 6-7 *American Convention on Human Rights (1969)*; art. 6 *African Charter on Human and Peoples' Rights (1981)*; art. 23 *African Charter on the Rights and Welfare of the Child (1990)*.
- ⁸² See footnotes 75 – 81.
- ⁸³ Report of the UN Secretary-General on children and armed conflict (2007), S/2007/757.
- ⁸⁴ Art. 2-9 *Convention Against Transnational Organised Crime (2000)* and the *Convention's Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children (2003)*.
- ⁸⁵ Art. 8, as above n. 70.
- ⁸⁶ For example, abduction for the purpose of exploitation is child trafficking – prohibited under art. 3 of the CRC's *Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography (2000)*; art. 3, *European Convention on Human Rights (1950)*; art. 6 *American Convention on Human Rights (1969)*; art. 5 *African Charter on Human and Peoples' Rights (1981)*.
- ⁸⁷ Art. 8(2)(a) Rome Statute
- ⁸⁸ Art. 7(1)(c)-(e), 7(1)(i), 8(2)(a), 8(2)(c) Rome Statute.
- ⁸⁹ Art. 6(e), 7(1)(c)-(e), 8(2)(a) Rome Statute
- ⁹⁰ *Prosecutor v. Kupreskic et. al*, ICTY (2000); *Prosecutor v. Kunarac, Kovac and Vukovic*, ICTY (2001)
- ⁹¹ Art. 77, AP I; art. 3 AP II
- ⁹² Article 9, UDHR; *United Nations Rules for the Protection of Juveniles Deprived of their Liberty (1990)*
- ⁹³ Common article 3, *Geneva Conventions*.
- ⁹⁴ Art. 76 Geneva IV
- ⁹⁵ Art. 82 Geneva IV
- ⁹⁶ Art. 89 Geneva IV
- ⁹⁷ Art. 94 Geneva IV; art. 4 AP II.
- ⁹⁸ See, for example: ICRC, as above n. 13 , p. 34.
- ⁹⁹ Art. 11, 18 Geneva IV, art. 48 AP I. For example, art. 48 AP I states: '...the Parties to the conflict shall at all times distinguish between the civilian population and combatants and between civilian objects and military objectives and accordingly shall direct their operations only against military objectives.'
- ¹⁰⁰ Art. 48, 52 AP I; Customary Rule 7 in: ICRC, as above n. 13 , p. 25; art. 48, 52 AP I; art. 13(1) AP II; *Nuclear Weapons Case*, International Court of Justice.
- ¹⁰¹ Customary Rules 10 – 22 in: ICRC, as above n. 13, p. 34; art. 50 Geneva IV (for occupying powers).
- ¹⁰² Art. 147 Geneva IV; Art. 85 AP I; Customary Rule 10-13 in: ICRC, as above n. 13 , p. 34.
- ¹⁰³ *Ibid.*; art. 52 AP I.
- ¹⁰⁴ Art. 15, 52 AP I; art. 9 -11, 18 AP II.
- ¹⁰⁵ Art. 3 *Amended Protocol II* and art. 2 *Protocol III* of the *Convention on Certain Conventional Weapons*.
- ¹⁰⁶ *Nuclear Weapons Case*, International Court of Justice (1996).
- ¹⁰⁷ Art. 1 – 3 *Geneva Convention for the amelioration of the condition of the wounded in armies in the field (1964)*; art. 15 and 27, *Hague Convention (1907)*
- ¹⁰⁸ Customary Rule 25, 28 in: ICRC, as above n. 13 , p. 79; art. 19 Geneva I; art. 18 Geneva IV; art. 12 AP I; art. 11 AP II.
- ¹⁰⁹ Art. 24, 28 CRC
- ¹¹⁰ Art. 26, UDHR; art. 12 (- health) and art. 13 (- education) ICESCR (1966); art. 13 *Additional Protocol to the American Convention on Human Rights (1999)*; art. 11, 14 *African Charter on the Rights and Welfare of the Child (1990)*.
- ¹¹¹ For illustrative list of national laws see: ICRC, as above n. 13 , p. 35.
- ¹¹² *Kupreskic (2000)* and *Blaskic (2000)*. In *Kupreskic*, the court stated: 'The deliberate attacks on civilians or civilian objects are absolutely prohibited by international humanitarian law.' In *Blaskic* case: The ICTY Trial Chamber found the accused guilty of 'unlawful attacks on civilian objects.'
- ¹¹³ Art. 8(2)(b), 8(2)(e) Rome Statute.
- ¹¹⁴ Art. 23, 142 Geneva IV; art. 54, 70, 77 AP I, art. 14, 18 AP II.
- ¹¹⁵ Art. 8(2)(b), 8(2)(e) Rome Statute.
- ¹¹⁶ Customary Rule 55 in: ICRC, as above n. 13, p. 193. See also: art. 55 Geneva IV.
- ¹¹⁷ *Ibid.*; art. 23 Geneva IV; art. 70(2) AP I.
- ¹¹⁸ Art. 23, 59 Geneva IV; art. 70(2) AP I; art. 18(2) AP II.
- ¹¹⁹ Art. 23, 55 Geneva IV; art. 70(3) AP I.
- ¹²⁰ See, for example, UNSC Res 824, UNGA Res 55/2, UN Commission on Human Rights Res 1995/77.
- ¹²¹ See, for example, Art. 12, 13 ICCPR; art. 13 UDHR; Customary Rule 56, ICRC, as above n. 13, p.200.
- ¹²² See, for example, art. 11 and 12 ICESCR; art. 6 CRC.
- ¹²³ Principle 8, *UN Declaration on the Rights of the Child (1959)*.

¹²⁴ Art. 22(1) CRC; also see: art. 6, 24 and 27 CRC.

¹²⁵ Principle 25, 30 *Guiding Principles on Internal Displacement*, OCHA 2004.

¹²⁶ See, for example: Art. 49 Geneva IV; art. 78 AP I; art. 17 AP II.

¹²⁷ See, for example: Art. 22 CRC; art. 23 *African Charter on the Rights and Welfare of the Child* (1999); art. 9 *Inter-American Convention on Violence Against Women* (1994); art. 4, 19 *Guiding Principles on Internal Displacement* (2004); UN SC Resolutions 688, 819, 999, 1010, 1019, 1124. See also International Committee of the Red Cross, *Customary International Humanitarian Law Vol. 1: Rules*, p466.

¹²⁸ See, for example, Art. 15, Hague Conventions (1907).

¹²⁹ Art. 70(4), 71(2) API, art.18(2) APII.

¹³⁰ Art. 60, 61 Geneva IV; art. 71 AP I; art. 18 AP II; Customary Rule 56, ICRC, as above n. 13, p. 200.

¹³¹ Art. 35 Geneva I; art. 21 Geneva IV; art. 21 AP I; art. 11 AP II; common Article 3 Geneva.

¹³² Customary Rule 31, 32 in: ICRC, as above n. 13, p. 105.

¹³³ Art. 5, 7 *UN Convention on the Safety of United Nations and Associated Personnel* (1994)

¹³⁴ UNSC Res. 897 (1994). The UNSC condemned “violence and armed attacks against persons engaged in humanitarian... efforts” in Somalia. Resolution 913 (1994). The UNSC condemned all attacks against humanitarian relief workers in Gorade, former Yugoslavia. The UNSC adopted similar resolutions condemning attacks or demanding that no attacks be directed against humanitarian relief work in Haiti, Angola, Somalia, Liberia, Burundi, and Afghanistan.

¹³⁵ Art. 4(b) Statute of the SCSL; *Prosecutor vs. Sesay, Kallon and Gbao (RUF Case) (February 2009)*

¹³⁶ *Prosecutor v. Nikolic*. ICTY (2003), *Prosecutor v. Krnojelac*. ICTY (2002), and *Prosecutor v. Delalic et al.*, ICTY (1998).

¹³⁷ Art. 8(2)(b) and (e) Rome Statute.

¹³⁸ Art. 6(c), 8(2)(b) and (e) Rome Statute.

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